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994645—52

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 598

GREGORY R. MARTINI, PETITIONER

v.

THE UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 53–56) has not been reported. The opinion of the Court of Appeals for the Second Circuit (R. 75–77) has been reported at 192 F. 2d 649.

JURISDICTION

The judgment of the Court of Appeals was entered on November 30, 1951 (R. 78). The petition for a writ of certiorari was filed on February 20, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

While petitioner, a supervisory employer of a shipyard, was engaged in the survey of a vessel in order to determine the defects requiring repair, he climbed the cargo battens[1] which are not intended to be used as ladders.[2] No one had requested petitioner to do this and none of the prospective repairs required this particular exploration. One of the clips holding a batten gave way due to a structural, unnoticeable defect, causing petitioner to fall. The questions presented are:

1. Whether the ship owed petitioner a warranty of seaworthiness.

2. Whether the hidden defect in the batten clip rendered the ship unseaworthy.

STATUTES INVOLVED

No statutes are involved in this case.

STATEMENT

In the fall of 1945 petitioner was employed as a general supervisor (R. 26) or superintendent (R. 57, 75) of the Cardinal Engineering Company (hereafter referred to as Cardinal) which operated a shipyard (R. 57). On October 31, 1945, the S. S. *James Jackson,* a vessel owned by the United States (R. 57, 75) and husbanded by the

[1] Cargo battens are wooden strips fitted to the inboard side of the hull of the ship to prevent contacts between the cargo and metallic surfaces (R. 22).

[2] See *infra*, pp. 9–10.

South Atlantic Steamship Line[3] under a general agency agreement[4] (R. 2–3) docked in New York harbor (R. 75).

The ship's general agent requested Cardinal to perform all the necessary repairs on the vessel. The shipyard accordingly sent out a team consisting of Joseph Cardinal, George Cardinal, the yard's General Superintendent, Skaar, its ship foreman, and petitioner, its general supervisor or superintendent (R. 57–58), in order to survey the work to be done.

One of the defects requiring repair was the backing up of water from certain shower stalls into a kitchen, caused by some fault in the port scupper (drain); (R. 58, 77; 48, 69, 74). Repeated earlier attempts to remedy this flooding had been unsuccessful (R. 30).

An inspecting party, consisting of petitioner, George Cardinal, and Skaar (R. 71), entered the hold to determine whether the trouble was caused by the absence of a scupper or of a valve in it, or because either of them was clogged (R. 58). George Cardinal using a flashlight, discovered that there was no port scupper (R. 58, 76). The absence of this drain completely explained the flooding and indicated that the shipyard would

[3] South Atlantic Steamship Line is a copartnership composed of the individual respondents listed in the caption of the petition (R. 2).

[4] Cf. *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783.

have to install a new port scupper rather than clean out the existing one (R. 74). George Cardinal consequently was ready to leave the hold and to check on other repairs (R. 58, 72–74). In the meantime, petitioner had decided to inspect the valve of the starboard scupper line. For that purpose he climbed up the cargo battens. When he was about 18–20 feet from the floor of the hold, a metal clip supporting one of the battens broke as the result of a structural and unnoticeable defect (R. 59, 35–39), causing petitioner to fall.

Petitioner filed a libel against the United States and the partners of South Atlantic Steamship Line [5] to recover for the injuries resulting from this accident. The district court dismissed the libel, found that there was no negligence in the maintenance of the broken clip (R. 59) and held that petitioner was not within the class of persons to whom the owner of the ship owed a warranty of seaworthiness (R. 60). It found, in addition, that petitioner had not been ordered by anybody to climb the cargo batten and that it was unnecessary to inspect the starboard scupper line (R. 59). The Court of Appeals affirmed (R. 75–78). It agreed that petitioner was not a person to whom the ship owed a duty of seaworthiness (R. 76). With respect to petitioner's contention

[5] The libel against the individual defendants was dismissed on the authority of *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783 (R. 61–62).

that the ship had failed to provide him with a safe place to work or to warn him of hidden dangers, the court found that when petitioner climbed the starboard battens he was on a needless exploratory expedition of his own.[6]

ARGUMENT

Petitioner apparently concedes that the break of the batten clip was not caused by any negligence on the part of the ship. He contends, however, that the court below erred in holding that he was not within the class of persons to whom the ship owes an absolute warranty of seaworthiness,[7] and claims that this liability without fault should extend to all business guests and invitees who perform any type of work aboard ship (Pet. 4). We

[6] The bland and unqualified assertions in the petition (p. 3) that petitioner had been ordered by the ship's engineer to inspect the valve and climb up the batten boards is contrary to the findings of the two courts below, not supported by any record reference, and contrary to the evidence at R. 20–22; 69; 72–74.

[7] The petition raises expressly only the question whether the warranty of seaworthiness extends to petitioner. He seems to argue, however, by implication, that by failing to supply him with a ladder and by requesting him to climb the unsafe battens the ship had breached its duty to supply him with a safe place to work. The concurrent findings of the two courts below (R. 59, 77), supported by ample evidence (*supra*, fn. 6) to the effect that petitioner's inspection of the starboard valve was unnecessary, that nobody had asked him to climb the battens and that the ship could not anticipate this needless exploratory expedition, dispose of this contention. *Faulkner* v. *Gibbs*, 338 U. S. 267, 268; *Comstock* v. *Group of Institutional Investors*, 335 U. S. 211, 214.

submit that the judgment below is correct and does not warrant further review.[8]

1. Petitioner asserts that all persons performing work aboard ship are covered by the warranty of seaworthiness and claims that this proposition is but the logical consequence of this Court's holdings in *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85. We submit that he cannot derive any support from that decision.

The *Sieracki* case held that a ship owed a warranty of seaworthiness to a longshoreman in spite of the fact that he was employed not by the ship but by an independent contractor, the stevedore. This result, however, was not based on a sweeping theory that this warranty extends to all persons performing work on behalf of the ship but on the far more limited consideration that the loading and unloading of the ship used to be performed by the crew (*Atlantic Transport Co.* v. *Imbrovek,* 234 U. S. 52, 61–62); *International Stevedore Co.* v. *Haverty,* 272 U. S. 50, 52). The Court concluded that the ship continued to owe the duty of seaworthiness to the persons performing those tasks, although as the result of modern methods of division of labor and of capricious methods of hiring they were no longer directly

[8] During the last few years this Court has denied certiorari in the cases in which the petitioner has made far less extravagant claims concerning the scope of the warranty of seaworthiness. *Bruszewski* v. *Isthmian S. S. Co.*, 333 U. S. 828; *Guerrini* v. *United States*, 335 U. S. 843; *Bruszewski* v. *United States*, 340 U. S. 865.

employed by the ship. In other words, that case did not increase the scope of the ship's absolute liability; it merely sought to prevent the erosion of a traditional protection which the maritime law had afforded to a specific type of work. (*Seas Shipping Co.* v. *Sieracki, supra,* at 96, 99, 100.)

The court below has correctly applied this basic theory of the *Sieracki* case. Thus it held in *Guerrini* v. *United States*[9]—on the authority of which it denied recovery in the instant case (R. 76)—that the ship owed no warranty of seaworthiness to the employee of an independent contractor who performed repair work on the ship. It pointed out that the relationship of these workers to the maritime world is frequently of the most casual nature[10] and that their relationship to their employers never partook of the paternalistic status of master and crew (167 F. 2d at p. 354). Moreover, the warranty of seaworthiness has never been regarded as extending

[9] 167 F. 2d 352, certiorari denied, 335 U. S. 843; to the same effect are *O'Connell* v. *Naess*, 176 F. 2d 138 (C. A. 2); *Miller* v. *The Sultana*, 176 F. 2d 203 (C. A. 2), certiorari denied, 338 U. S. 907; *Rich* v. *United States*, 192 F. 2d 858 (C. A. 2).

[10] Longshoremen specializing in the loading and unloading of ships have retained somewhat of an amphibious nature but repair workers usually are shorebound mechanics. Petitioner's contacts with the maritime world are very loose. He took engineering courses in air conditioning and refrigeration. Before working for the ship yard he was employed by the Radio Corporation of America and by an oil company (R. 25).

to the principal and typical tasks of ship yard employees: the performance of structural repairs [11] and the removal of the causes of unseaworthiness.[12]

2. These considerations show that the warranty of seaworthiness does not extend to ship yard employees performing repairs on board ship. They apply with particular force to the instant case in view of the nature of the prospective repair which had to be performed, and in view of the unusual circumstances surrounding petitioner's accident.

a. The repair in the instant case involved the installation of a new scupper line, a major structural repair. In other words it was of a nature which, historically, has not been performed by the crew (*Guerrini* v. *United States, supra,* at 354) and which, as the events in this case indicate, could not have been performed by the crew

[11] Structural repairs were outside the scope of the ship's work which was limited to the regular maintenance work. Hence, structural repairs are not covered by the *Sieracki* doctrine. Cf. *Guerrini* v. *United States*, 167 F. 2d 352, 354 (C. A. 2), certiorari denied, 335 U. S. 843.

[12] The warranty of seaworthiness does not extend to repairs designed to make the ship seaworthy. *Bruszewski* v. *Isthmian S. S. Co.*, 66 F. Supp. 210 (E. D. Penna.), affirmed, 163 F. 2d 720 (C. A. 3), certiorari denied, 333 U. S. 828; *Bruszewski* v. *United States War Shipping Admin.*, 88 F. Supp. 962 (E. D. Penna.), affirmed, 181 F. 2d 419 (C. A. 3), certiorari denied, 340 U. S. 865; *Armento* v. *United States*, 74 F. Supp. 198 (E. D. N. Y.); *De La Pena* v. *Moore-McCormack Lines*, 84 F. Supp. 698 (S. D. N. Y.); cf. *Byars* v. *Moore-McCormack Lines*, 155 F. 2d 587 (C. A. 2).

(*supra,* p. 3, R. 30). Hence, to apply the warranty of seaworthiness to this case would be to create a new liability rather than to prevent the destruction of an existing one.

b. Moreover, this case presents the unusual circumstance that the injury was not suffered by a worker actively engaged in the repair of the vessel,[13] but by a supervisory employee while he, together with other officials of the ship yard, was surveying the ship, preparatory to the award of the repair contract. He held the status of a business guest within the literal meaning of that term, not that of a helpless ward of the admiralty performing a maritime service (cf. *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85, 90–91, 93–94). This is certainly not a situation to which the exceptional incident of absolute liability without fault should attach.

3. Assuming, however, for the sake of argument, that petitioner was engaged in the ship's service when he surveyed the ship, he still cannot recover because the hidden defect in the batten clip did not render the ship unseaworthy.

The courts have ruled consistently that the purpose of cargo battens is merely to prevent the cargo from coming into contact with the hull of the vessel, and that they are not intended to be

[13] The facts do not bear out petitioner's supposition (Pet. 4) that he was a "shore mechanic working under the direct orders and supervision of the ship's Chief Engineer."

used as ladders.[14] Hence, the inability of a batten or of a batten clip to support a man's weight does not render a ship unseaworthy. *Holub* v. *Sword S. S. Line,* 132 F. 2d 206, 207 (C. A. 5); *Christiansen* v. *United States,* 94 F. Supp. 934, 936 (D. Mass.), affirmed, 192 F. 2d 199 (C. A. 1).

CONCLUSION

The decision of the court below is clearly correct, and further review is not warranted. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1952.

[14] *The Queen Elizabeth*, 209 Fed. 712 (N. D. Cal.); *Sulsenti* v. *Cadogan S. S. Co.*, 54 F. Supp. 570 (S. D. N. Y.), *Aurigemma* v. *Nippon Yusen Kaisha Co.*, 238 N. Y. 183; *Cangemi* v. *Lorentzen*, 1944 A. M. C. 880 (Sup. Ct. Kings Co. N. Y.); cf. R. 20–22).

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